IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Group Art Unit: 2144
	)	
Edward Eytchison et al.	)	Examiner: Cloud, Joiya M.
	)	
Serial No.: 10/763,868	)	
	)	**REPLY BRIEF IN RESPONSE TO**
Filed: January 22, 2004	)	**EXAMINER'S ANSWER**
	)	
For: **METHODS AND**	)	
APPARATUSES FOR	)	
STREAMING CONTENT	)	162 N. Wolfe Rd.
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Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

In reply to the Examiner's Answer mailed on September 30, 2011, this Reply Brief is hereby submitted to the Board of Patent Appeals and Interferences in compliance with the requirements of 37 C.F.R. § 41.41. Claims 1-27 (including the independent claims 1, 11, 19, 20 and 27) have been rejected.

The burden of establishing a *prima facie* case of anticipation has not been met to support the rejections.

Appellant contends that the rejection of Claims 1-27 is in error and should be overcome by the appeal in the application referenced above. Appellant further contends that the Loomis patent application does not support the rejection of Claims 1-27. In view of the foregoing, Appellant respectfully submits this Reply Brief, wherein:

the **STATUS OF THE CLAIMS**, begins on page 2;

the **GROUNDS FOR REJECTION**, begin on page 3; and

ARGUMENTS, begin on page 4 of this paper.

STATUS OF THE CLAIMS

Claims 1-27 are involved in the appeal.

Claims 1-27 stand rejected under 35 U.S.C. § 102(e) as being anticipated in view of U.S. Patent Publ. No. 2006/0155400 to Loomis (hereinafter "Loomis").

Within the Appeal Brief, the rejections of Claims 1-27 are appealed.

GROUNDS OF REJECTION AND MATTERS TO BE REVIEWED ON APPEAL

The following issues were presented in the Appeal Brief for review by the Board of Patent Appeals and Interferences:

1. Whether Claims 1-27 are properly rejected under 35 U.S.C. § 102(e) as being anticipated by Loomis.

ARGUMENT

I.   SUMMARY OF THE CLAIMED INVENTION

The invention disclosed in the present application number 10/763,868 is directed to methods and apparatuses for streaming content. The content is presented such that a delay time between requesting the content and utilizing the content is minimized. The identity of the user is detected and a preference is identified corresponding to the user. A content item is then selected based on the preference and an initial portion of the content is pre-fetched and stored in a temporary storage cache. When a request is received for the content item, the initial portion is streamed from the temporary storage cache to a stream synchronizer, producing a resultant stream using the initial portion of the content item and seamlessly transitioning the resultant stream from the initial portion of the content item to an entire segment of the content item.

Each of the claims being appealed includes a limitation, or similar variant, specifying seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item. As will be discussed in detail below, the cited references do not disclose, teach, or even suggest seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item.

Additionally, Claim 27 includes the limitation seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends. As will be discussed in detail below, the cited references do not disclose, teach, or even suggest seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends.

II.   THE CITED REFERENCES DO NOT DISCLOSE, TEACH, OR EVEN SUGGEST EACH AND EVERY ELEMENT OF THE CLAIMS

Appellant respectfully submits that the cited reference, Loomis simply does not disclose, teach, or even suggest seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item. Loomis also does not disclose, teach, or even suggest seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends.

Within the Examiner's Answer, in the Response to Arguments section, a comparison of the Present Specification and Loomis is provided. Specifically, page 3 of the Present Specification is cited, part of which is shown here:

> stream the initial portion of the selected content from the temporary storage cache to a stream synchronizer; simultaneously load **an entire segment** of the selected content to the stream synchronizer while streaming the initial portion; produce a resultant stream comprising the initial portion of the selected content; and **seamlessly transition the resultant stream from the initial portion of the content to the entire segment of the content."** (Emphasis in original) [Examiner's Answer, page 9]

Additionally, paragraph 7 of Loomis is cited:

> **"The apparatus starts to play the pre-buffered small portion** (initial portion) **of the target song and starts to download the rest of the target song at the same time. Because the system is so configured that the time for playing the pre-buffered small portion is longer than the initial buffering time for the rest of the target song, the entire target song is played smoothly** (transitioning to the entire content item). **In other words, there is no unintended delay between the first small portion and the rest portion either.,"**(sic) (Emphasis in original) [Examiner's Answer, page 10]

Within the Examiner's Answer, it is posited that this comparison supports the Examiner's argument that Loomis teaches the claimed invention. However, the comparison actually proves Appellant's argument that Loomis does not teach the claimed invention. From the cited section of the Present Specification, the Present Specification teaches "stream[ing] the initial portion" and "simultaneously load[ing] an entire segment of the selected content." Appellant contends that the claim language which states "entire content item" means the full content item and not less than the entire content item. Merriam-Webster defines "entire" as "having no element or part left out" which supports Appellant's contention that Loomis is different than the presently

claimed invention. In contrast to the presently claimed invention, the cited section of Loomis teaches, "download the **rest** of the target song at the same time." Merriam-Webster defines "rest," as used in this context, as "something that remains over" and provides a synonym of "remainder." In other words, Loomis clearly teaches downloading an initial portion and a remainder less than the full target song. Therefore, the claimed invention is directed to streaming an initial portion and streaming an **entire** content item; whereas, Loomis clearly teaches playing a pre-buffered small portion and downloading the **rest** of the target song.

Within the Examiner's Answer, there is only a brief mention of Appellant's argument that Loomis teaches away from streaming the entire content. As described within the Appeal Brief, Loomis explicitly teaches away from downloading the entire song. Specifically, Loomis teaches, "avoiding of downloading the entire next song conserves bandwidth and memory." [Loomis, ¶ 84] Clearly, Loomis does not teach seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item.

Within the Examiner's Answer, in the Response to Arguments section, it has been stated that Loomis teaches seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends. [Examiner's Answer, page 10] To support this assertion, the Examiner has stated that, "by definition of seamless transitioning, a transition must be made just prior to the expiration of the X seconds of an initial portion in order to be seamless." [Examiner's Answer, page 10] Paragraph 7 of Loomis is cited as supporting this argument. However, as can be easily seen, paragraph 7 of Loomis teaches nothing to support the argument that the transition to the entire content item occurs before the initial portion ends. In its entirety, paragraph 7 of Loomis states:

> In an Internet based personalized radio, where a user has a pre-selected list of songs to be played in a particular order, the invention provides an apparatus and method allowing the user to skip one or more songs without having a delay between skips. This is accomplished by downloading and pre-caching, i.e. pre-buffering the first small portion of each of the next several songs on the play list so that, should the user choose to skip to any of the next several songs, the pre-buffered small portion of the target song is already available to be played and therefore there is no unintended delay between two songs. The apparatus starts to play the pre-buffered small portion of the target song and starts to download the rest of the target song at the same time. Because the system is so configured that the time for playing the pre-buffered small portion is longer than the initial buffering time for the rest of the target song, the entire target song is played smoothly. In other words, there is no unintended delay between the first small portion and the rest portion either. [Loomis, ¶ 7]

As described above, the cited section of Loomis teaches nothing of seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item <u>before</u> the initial portion ends. The goal of playing a song uninterrupted does not necessitate transitioning before the initial portion ends, since such a goal is able to be achieved by transitioning when the initial portion ends as is, in fact, taught by Loomis.

The Examiner also cites paragraph 47 of Loomis for support. In its entirety, paragraph 47 of Loomis states:

> Step 303: If S_5 is identified in the buffer and because the first ten seconds of S_5 is already there, the system can start to read S_5 immediately. This means that there is no unintended delay between S_1 and S_5 unless the networking condition is abnormally bad or the user has exhausted the local cache. At the same time, the application asks the server to transmit the rest of S_5 to the buffer. Because the buffering time for the rest of S_5 is less than ten seconds, by the time the reader finishes reading the pre-buffered ten seconds of S_5, a sufficient part of the rest of S_5 is already there and is ready to be read. Therefore, there is no interruption between the first ten seconds of S_5 and the rest of S_5. In this way, the user experience is enhanced and waiting time is minimized. [Loomis, ¶ 47]

This cited section proves Appellant's argument that Loomis teaches transitioning <u>when</u> the initial portion ends, not <u>before</u>. Specifically, from the cited section above, Loomis teaches, "there is no interruption between the first ten seconds of S_5 and the rest of S_5." Therefore, Loomis clearly teaches playing the first ten seconds and then transitioning to the rest of the song. Loomis also teaches, "**when** the playing of the pre-cached portion **ends**, immediately play the rest of the target song which is being downloaded from the server over the Internet." (Emphasis added) [Loomis, ¶ 68] Loomis is exact in the words used, and "when" and "end" are not ambiguous in any way. Loomis clearly teaches using the initial portion and then transitioning to the rest of the song <u>when</u> the initial portion ends, not before. Therefore, Loomis does not teach seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item <u>before</u> the initial portion ends.

The burden of establishing a *prima facie* case of anticipation based on the teachings of Loomis has not been met by the Examiner because this reference does not disclose all claim limitations in each of Appellant's independent claims.

III.   CONCLUSION

Each of the claims pending within this appeal include limitations specifying seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content

item. Additionally, Claim 27 includes the limitation seamlessly transitioning the resultant stream from the initial portion of the content item to the entire content item before the initial portion ends. There is nothing in the teachings of the cited reference that supports the rejections of claims with such limitations. To support the rejection of the pending claims, the Examiner has read more into the reference than is actually taught. As discussed in detail above, the reference does not disclose, teach, or even suggest the limitations of the pending claims. In view of the foregoing, it is respectfully submitted that Claims 1-27 (including the independent claims 1, 11, 19, 20 and 27) are allowable over the teachings of the cited references. Therefore, review of this appeal and a favorable indication is respectfully requested.

Respectfully submitted,
HAVERSTOCK & OWENS LLP

Dated: __November 28, 2011__   By: __/Jonathan O. Owens/_____
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